

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RONALD ALLEN,

Defendant-Appellant.

UNPUBLISHED

January 29, 2008

No. 272183

Jackson Circuit Court

LC No. 06-003346-FH

Before: Beckering, P.J., and Sawyer and Fort Hood, JJ.

PER CURIAM.

Defendant was found guilty by a jury of third-degree fleeing and eluding a police officer, MCL 257.602a(3), and was sentenced as a fourth habitual offender, MCL 769.12, to four to twenty years' imprisonment. He appeals as of right. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

On March 3, 2006, the City of Jackson Police Department had a surveillance team observing a house. Sergeant Hitt observed a white car driven by defendant pull in front of the house, stop for a short time, and then drive away. Hitt radioed a description of the car and what he had observed to Officer Speidel, another officer on the surveillance team who was in his marked patrol car around the nearest corner. Defendant failed to use the car's turn signal when turning onto the street where Speidel was waiting in the patrol car.

Speidel watched defendant turn at the next street, turned his car around, caught up to defendant, and turned on his lights to make a traffic stop due to defendant's failure to use his turn signal. Defendant did not stop his car. For the next two minutes, defendant continued driving his car at slow speeds of approximately 15 miles per hour, making many turns throughout residential areas, and failing to stop at a stop sign. By the time defendant stopped his car, three officers were involved in the chase.

Once defendant's car was stopped, he did not willingly get out of the vehicle or obey all of the commands given by the officers. In the end, two officers had to open his car door, reach in to get the keys, release defendant's seatbelt, and take him out of the car.

Defendant raises two issues on appeal. As his first issue, defendant claims there was insufficient evidence of fleeing and eluding because he did not take affirmative action such as increasing his speed. Defendant's second issue asserts that the statutory enhancement for third-

degree fleeing and eluding was meant to protect people in residential areas from high-speed chases, but does not apply to slow-speed chase situations.

When reviewing a claim of insufficient evidence to support a conviction, this Court reviews the evidence *de novo*, in the light most favorable to the prosecution to “decide whether any rational fact-finder could have found that the essential elements of the crime were proven beyond a reasonable doubt.” *People v Odom*, 276 Mich App 407, 418; 740 NW2d 557 (2007).

The statute for third-degree fleeing and eluding a police officer, MCL 257.602a, provides in pertinent part:

(1) A driver of a motor vehicle who is given by hand, voice, emergency light, or siren a visual or audible signal by a police or conservation officer, acting in the lawful performance of his or her duty, directing the driver to bring his or her motor vehicle to a stop shall not willfully fail to obey that direction by increasing the speed of the motor vehicle, extinguishing the lights of the motor vehicle, or otherwise attempting to flee or elude the officer...

* * *

(3) ...[A]n individual who violates subsection (1) is guilty of third-degree fleeing and eluding,... if 1 or more of the following circumstances apply: ... (b) A portion of the violation occurred in an area where the speed limit is 35 miles an hour or less, whether that speed limit is posted or imposed as a matter of law.

Six elements are required to establish third-degree fleeing and eluding:

(1) the law enforcement officer must have been in uniform and performing his lawful duties and his vehicle must have been adequately identified as a law enforcement vehicle, (2) the defendant must have been driving a motor vehicle, (3) the officer, with his hand, voice, siren, or emergency lights must have ordered the defendant to stop, (4) the defendant must have been aware that he had been ordered to stop, (5) the defendant must have refused to obey the order by trying to flee from the officer or avoid being caught, which conduct could be evidenced by speeding up his vehicle or turning off the vehicle’s lights among other things, and (6) some portion of the violation must have taken place in an area where the speed limit was thirty-five miles an hour or less.... [*People v Grayer*, 235 Mich App 737, 741; 599 NW2d 527 (1999).]

The fifth element is the one at issue in this case. The terms flee and elude both “connote an intent to take affirmative action, not simply fail to submit.” *Id.* at 741. The prosecution must show that the defendant refused to obey by trying to flee or avoid capture, but there is no requirement for excessive speed or that the defendant traveled a certain distance before stopping. *Id.* at 741-742.

In the present case, defendant drove for approximately two minutes after the officer turned on his overhead lights directing defendant to stop. Defendant went through a stop sign and made multiple turns through residential areas. Once defendant stopped and the police

officers were next to his vehicle, he did not follow instructions and did not freely submit to the arrest. Indeed, the officers had to forcibly remove defendant from his car.

Defendant's conduct of continued driving for two minutes after being signaled to stop and failing to stop at a stop sign during that time is sufficient evidence for a rational trier of fact to find that defendant took affirmative actions to avoid capture at that time.

Defendant's second issue argues that the statutory enhancement to third-degree fleeing and eluding was not meant to apply in situations of slow-speed chases. The specific statutory provision in question states that a violator of the statute is guilty of third-degree fleeing and eluding if "[a] portion of the violation occurred in an area where the speed limit is 35 miles an hour or less whether that speed limit is posted or imposed as a matter of law." MCL 257.602a(3)(b).

Defendant did not raise this issue before the trial court so it is not preserved. Thus, the issue is reviewed to determine whether plain error affected defendant's substantial rights. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999).

"The goal of statutory interpretation is to ascertain the intent of the Legislature." *Grayer, supra* at 739. The first step to determine the Legislature's intent is to examine the specific language of the statute. *Id.* If the plain and ordinary meaning of the language is clear, then judicial construction is normally not permitted or necessary. *Id.*

The language of the statutory provision in question is unambiguous: The crime is enhanced to third-degree if "[a] portion of the violation occurred in an area where the speed limit is 35 miles an hour or less." MCL 257.602a(3)(b). Defendant asserts that the Legislature only intended for the enhancement to apply in cases where a high-speed chase endangered neighborhood residents. But defendant has not noted any ambiguity in the plain language of the statute. The statutory language is clear and unambiguous. Therefore, judicial construction is not necessary or permitted. Defendant has not shown plain error affecting his substantial rights.

Affirmed.

/s/ Jane E. Beckering
/s/ David H. Sawyer
/s/ Karen M. Fort Hood